Appl. No. 09/980,330
Atty. Docket No 7596
Response dated November 11, 2005
Reply to Office Action of July 11, 2005
Customer No. 27752



## REMARKS

### Claim Status

Claims 1 - 10 are pending in the present application and stand rejected. No amendments have been made and no new subject matter has been introduced.

### Double Patenting

Claims 1–10 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 5, 11, 12, 14, 15, 16, 6, 7, and 9 respectively, of US Patent 6410465 issued to Lim et al. and assigned to E.I. du Pont de Nemous and Company. The Office states that although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the application are virtually identical to the '465 claims such that no claim in the application could be literally infringed without literally infringing the corresponding claims noted above in the '465 patent.

Applicants respectfully traverse the rejections because the claims of the present invention are patentably distinct from the claims of each of the aforementioned patents that are commonly owned with the present application. In order to simplify the issues in the present application, however, Applicants concurrently submit with this response the appropriate Terminal Disclaimer over the cited '465 patent as well as a statement under §103(c) since the present invention and the invention of the '465 patent were developed pursuant to a joint research agreement between The Procter & Gamble Company and E.I. du Pont de Nemours and Company. In submitting this Terminal Disclaimer, Applicants state for the record that this Terminal Disclaimer is not an admission of obviousness. In fact, the Federal Circuit has held that:

> [T]he filing of a terminal disclaimer "simply serves the statutory function of removing the rejection of double patenting, and raises neither presumption nor estoppel on the merits of the rejection."

Quad Envtl. Techs. Corp. v. Union San. Dist., 20 USPQ2d 1392 (Fed. Cir. 1991).

Applicants therefore submit that the provisional obviousness-type double patenting rejections have been overcome.

### Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection based on obviousness-type double patenting. Early and favorable action in the case is

respectfully requested. This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied reference. In view of the foregoing, reconsideration of this application and allowance of Claims 1-10 is respectfully requested.

Respectfully submitted,

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